

v. 2867

No. 14365

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IN THE  
**United States**  
**Court of Appeals**  
FOR THE NINTH CIRCUIT

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W. J. EARHART,

*Appellant*

VS.

ALFRED J. CALLAN JR.,  
Trustee — in Bankruptcy of  
the Estate of Felix Ivan Pugh,  
Bankrupt,

*Appellee.*

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UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES, FOR THE WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION

---

HONORABLE WILLIAM J. LINDBERG, *Judge*

---

**BRIEF OF APPELLANT**

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and  
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Seattle 1, Washington

FILED



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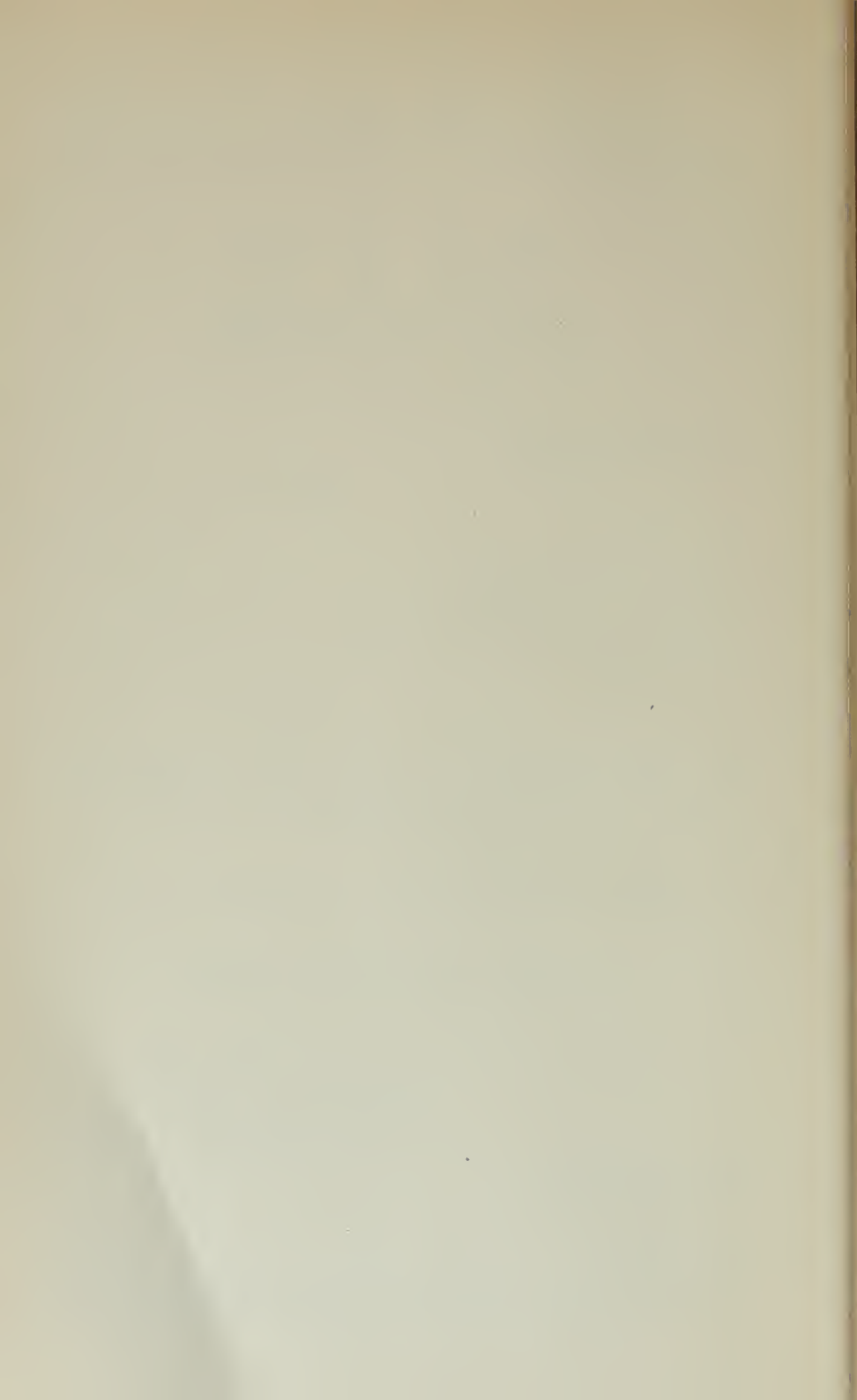
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**JURISDICTIONAL STATEMENT**

The jurisdiction of the referee in bankruptcy is conferred by Section 66 and 67, Title 11 U.S.C.A., upon the District Court by Section 1291, Title 28 U.S.C.A., and on this Court by Sec. 1294, Title 28 U.S.C.A.

## PRELIMINARY STATEMENT

On the 10th of June, 1952, Anna Margaret Earhart, being the owner of a dairy farm near Kent, Washington obtained by her through the estate of her nephew, David Earhart, the son of W. J. Earhart, who served as Administrator of said estate and manager of the affairs of Anna Earhart, his sister, leased the same to Felix Ivan Pugh for a term of four years and nine months at the agreed monthly rental of \$125.00. On the same date W. J. Earhart, being the owner of twenty-one head of cattle, sold the same to Pugh and took a chattel mortgage thereon from Pugh in the amount of \$5,350.00, payable at the rate of \$100.00 per month. (R. 38)

Pugh, having become delinquent on the monthly payments of both the lease and the chattel mortgage, in July 1953 negotiated a new loan from the Farmers Home Loan Administration for an amount sufficient to retire the chattel mortgage held by W. J. Earhart. (R. 39)

In this transaction Earhart assigned his chattel mortgage to the Farmers Home Loan Administration.

Earhart, in addition to taking a chattel mortgage on the cattle, and without security financed Pugh in the purchase of hay to feed the cattle during the winter of 1952 amounting to some \$1500 for which



Pugh never fully paid. This is listed in the bankrupt's schedule of debts.

In July 1953, after making his new loan from the Farmers Home Loan Administration, Pugh wanted Earhart to again finance him for the hay needed for feeding in the winter of 1953, which Earhart refused to do, but instead Earhart agreed to buy and pay for the hay which Pugh agreed may be stored in a large barn on the leased premises without storage charges, Earhart agreeing orally to sell the hay to Pugh at a later date (R. 40), as, if, and when used to feed the cattle. *None of this hay was ever used by the bankrupt, and no sale to the bankrupt by Earhart was ever consummated.*

In pursuance of this agreement Earhart did purchase and pay for 54 tons of baled alfalfa hay and paid for the hauling thereof from Sunnyside, Washington to Kent and in accordance with the oral agreement with Pugh caused the same to be stored in the large barn on the leased premises, at a total cost to him of \$1532.49. (R. 41)

The 1953 feeding season had not yet arrived and none of this hay had been purchased by Pugh from Earhart when, on October 14, 1953, Pugh filed his petition in bankruptcy and on the same day was adjudged bankrupt. (R. 3)

In his schedule of assets Pugh *did not list this hay as an asset*, and naturally did not therefore claim it as exempt. (See schedules attached to petition, which has never been amended.)

### STATEMENT OF THE CASE

Alfred J. Callan Jr. was elected Trustee and on November 17, 1953 filed with the referee in bankruptcy a petition for an order to be directed to W. J. Earhart, appellant herein, and Felix Ivan Pugh, the bankrupt, to show cause why it should not be determined that the trustee has full and complete title to 54 tons of hay "purchased from Walters by Felix Ivan Pugh and hauled by L. R. Strother Company at the request of Felix Ivan Pugh and located in the hay barn on the residence of Felix Ivan Pugh \* \* \* have no interest whatsoever in said hay as against this Trustee in bankruptcy \* \* \*." (R. 5-7)

Pursuant to this petition an order to show cause was issued (R. 8-10) returnable December 1, 1953.

To this order to show cause a return was filed by W. J. Earhart, in which it was set forth among other things that said hay was purchased from one Walters at Sunnyside, Washington by W. J. Earhart and the hauling thereof was paid for by W. J. Earhart and *not by the bankrupt*, at a cost to Earhart of \$1532.49. (R. 10-13)

After hearing before the referee on oral testimony and documentary evidence findings of fact were made and entered by the referee on January 4, 1954.

The findings of fact by the referee are set out in full at pages 14 to 16 of the record, and the conclusions of law at pages 16-17.

Findings numbered 3 and 4 read:

3. Felix Ivan Pugh paid for said hay by tendering his check in the sum of \$1200.00 to the said Harry C. Walters, and that it was the intent of both parties that title to said hay pass to Felix Ivan Pugh, and the first load of said hay was delivered to Felix Ivan Pugh prior to September 7, 1953, by L. R. Strothers Company at the request of Felix Ivan Pugh.
4. That prior to the purchase of said hay by Felix Ivan Pugh both Mr. W. J. Earhart and Felix Ivan Pugh had agreed that Mr. Earhart would finance the transaction. Mr. Pugh bought the hay in good faith, tendering his check therefore and believing that Mr. Earhart would loan Felix Pugh sufficient funds to cover said check as had been done in the past. (R. 14-15)

These two findings by the referee are not only not supported by the evidence but are contrary to the evidence. (R. 40, Ex. 1, 2, 3, 4 and 5, set out at pp. 9 - 17 hereof).

*The evidence from the lips of the bankrupt himself is that his check for \$1200.00 was dishonored*

by the bank on which drawn and was returned marked NSF. (R. 28)

### PETITION FOR REVIEW

On January 14, 1954, W. J. Earhart, appellant, filed his petition for review in accordance with the provisions of Title 11, Section 67(c) F.C.A., (R. 18-20) which in U.S.C.A. is Sec. 67(c), Title 11.

*Review of Orders*, Title 11, Sec. 67(c) U.S.C.A. provides:

“A person aggrieved by an order of a referee may, within ten days after the entry thereof, or within such extended time as the court may for good cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing.

Such petition shall set forth the order complained of and the alleged errors in respect thereto. \* \* \*

A federal district court has the right to hear new evidence on a petition to review order of reference in bankruptcy proceeding.

*In re Florsheim* (D.C. Cal. 1938) 24 F. Supp. 991.

It is not necessary for the purpose of obtaining a review that formal exceptions should have been taken to the decision and ruling of the reference.

*In re Lane Lumber Co.* (D.C. Ida. 1913) 206 F. 780.

Thereafter, the referee filed with the clerk of the district court his certificate on review, *together with a transcript of the testimony* taken before him *including all exhibits.* (R. 14-17 and 62-65)

In the interim one Alex Tibeau took over the leased premises, purchased the cattle from Farmers Home Loan Administration, and in February 1954 entered into a stipulation in writing with the trustee in Bankruptcy and W. J. Earhart, appellant, by the terms of which Tibeau agreed to purchase from the trustee the 54 tons of baled hay for \$30 per ton and agreed to pay the trustee therefor, as used by him, in the feeding of the livestock owned by him and as between the trustee and Earhart it was agreed that all sums received by the trustee from Tibeau would be, by said trustee, kept in a separate account to await the outcome and final determination as to the title to said baled hay. (Sup. R.)

Thereafter and on March 8, 1954 the matter came on regularly for hearing on review before Honorable William H. Lindberg, one of the judges for the District Court for the Western District of Washington, *no further evidence being offered* and counsel for all parties being heard in oral argument at the conclu-

sion of which, the court, without making any findings of its own, as required by Rule 52, Federal Rules of Federal Procedure, made and entered an order affirming in toto, the order of the referee (R. 65-67).

### DISTRICT COURT ORDER

The order was entered March 22, 1954 and reads:

“ORDERED, adjudged and decreed that the order heretofore entered by the Honorable Van C. Griffin, Referee in bankruptcy, on the 4th day of January 1954 is in all respects ratified, approved and confirmed and the order of the referee is particularly affirmed as to (a) ordering 54 tons of alfalfa hay to be administered as an asset of bankrupt estate, (b) ordering the Trustee to take possession of said hay, (c) ordering that said hay be sold by the Trustee, free and clear of all liens and encumbrances (d) *ordering that petitioners have no right, title, or interest in said hay*, and (e) in making and entering the order of January 4, 1954 and it is

Further ordered, that the above entitled cause be returned to the Referee in bankruptcy for further proceedings in the administration of the above entitled estate.” (R. 65-67)

Notice of appeal and cost bond were filed April 16, 1954.

The printed record was received July 28, 1954.

## THE EVIDENCE

The District Court on review, made no independent findings of fact.

Testimony taken before the referee was transcribed and filed with the certificate of the referee, together with all exhibits, (R. 14-17, 64). The list of exhibits and the exhibits themselves, introduced at the hearing before the referee on December 1, 1953, were made a part of the return by the referee, have been brought to this court and are as follows:

Ex. No. 1—Handwritten statement dated October 16, 1953 signed by Ivan Pugh, which reads: "*I wish it to be known that the 54 tons of alfalfa hay in the barn at 611 West Taylor Road was bought and paid for by W. J. Earhart is fully his property and I have no claim against it.* (signed) Ivan Pugh."

Ex. No. 2—Statement dated November 24, 1953 from United States Department of Agriculture, Farmers Home Administration.

That exhibit on the letterhead of the Farmers Home Loan Administration under date of November 24, 1953 reads:

"To whom it may concern:

Mr. Ivan Pugh's statement regarding 54 $\frac{1}{3}$  tons

of alfalfa hay stored in the barn at 611 West Taylor Road, Kent, Washington is as follows:

'October 21, 1953

*'This is to certify that approximately 60 tons of baled hay which is in the barn was purchased by William J. Earhart of 6723 South 124th Street, Seattle, Washington, and was brought out to the farm by Mr. Earhart.*

(signed) F. I. PUGH.'

The above is a true copy of the above statement, the original of which is on file in my office.

(signed) E. R. HANSON."

(Sworn to by E. R. Hanson before  
Geo. Asby, Notary Public, Nov. 24,  
1953)

Ex. 3—Copy of letter from W. J. Earhart to First National Bank of Enumclaw, dated August 22, 1953, which reads:

(On the stationery of the bank and addressed to the bank)

"August 22, 1953

"I told Ivan Pugh that I would see that he could lay in his alfalfa hay for the winter and consequently when he was over at Sunnyside he bought 60 tons of hay at \$20 trucking extra. He wrote a check for \$1200.00, thinking I would cover it as soon as he got here.

I do not intend to handle it that way. I will buy the hay and store it at the farm and will



sell it to Ivan as he uses it by the month.

Here is my check for \$1200.00. Will you please handle it so that I will be the owner of the hay and I will pay you for the trouble you are put to.

I believe Ivan's check is made payable to Waters and Thackery, Sunnyside, Washington.

(signed) W. J. EARHART"

Ex. 4—Letter from First National Bank of Enumclaw to W. J. Earhart, dated August 24, 1953. Cancelled check attached.

That exhibit on the letterhead of the bank, addressed to Mr. Earhart reads:

"Enclosed herewith your check in the amount of \$1200.00 which we are returning. We suggest that you make direct payment to the people from whom you purchased the alfalfa and get a bill of sale. We have no way of protecting your interest in this matter and consequently we have handled it in this way."

Ex. 5—Cancelled check of W. J. Earhart to Harry S. Walters \$1200.00 dated 8/27/53.

Ex. 6—Cancelled checks of Mr. Earhart to L. R. Strother Co., \$112.00 9/28/53; L. R. Strother \$220.42 9/30/53; Ivan Pugh \$112.97 9/25/53.

All of these exhibits are listed at pages 64 and 65 of the record were forwarded to this court by the clerk of the District Court as part of the record but the details of the exhibits have not been printed in

the record, because of the cost of so doing, and it is solely for the convenience of the court that we here set out that detail.

## THE ORAL EVIDENCE BEFORE THE REFEREE

In filing his return to the petition for review there was returned by the referee a 48-page transcript (R. 64) this is in the printed record (R. 20-59) and we here set out, the pertinent parts thereof for this court's convenience in considering the evidence as the District Court made no findings of fact whatever. (R. 65-67)

In the examination of the bankrupt before the referee by Mr. Barreca, attorney for the Trustee, we find the following: (R. 21)

Q. And about how much hay was there?

A. Well, there was supposed to be 54 tons of alfalfa *some odd tons of local hay.*

Q. You were in possession of approximately 54 tons of alfalfa hay?

A. Yes, sir.

THE COURT. That has been eaten up?

A. Not quite. (R. 21)

The bankrupt testified he went from Kent to Sunnyside, Washington in July, 1953 and looked at

some 200 tons of baled alfalfa hay in three stacks, and asked Mr. Walters if he could buy about 60 tons (R. 27). That he gave his check to Walters for \$1200.00 (R. 28)

Q. (by Mr. Ghormerly) What happened to the check?

A. Mr. Walters disposed of the check.

Q. Disposed of it?

A. Yes, sir.

Q. What do you mean by that?

A. *The check was sent to the bank, and it was returned NSF*, and then he disposed of the check (R. 28)

Q. Who was to pay for the hauling?

A. I would.

Q. Did you pay for the hauling of that hay?

A. Yes, sir.

Q. The whole thing?

A. There was some of it that Mr. Earhart gave me a check to pay for it with.

Q. Did he give you a check to pay for all of it?

A. Yes, he furnished the money to pay for all of it. (R. 30)  
(Italics supplied)

(See Exhibits 5 and 6 R. 65) as set out at page 11 hereof).

The witness testified concerning a visit made by Strothers to his place at Kent before the hay was

hauled from Sunnyside to Kent and was then asked:

Q. When the whole thing was completed you gave your check for the hauling, the full amount of the hauling?

A. Mr. Earhart's check.

Q. Did you go to anyone to try to refinance the cattle — your cattle were mortgaged?

A. Yes, sir.

Q. *Did you say to the banker or the credit association or whoever it was, your assets were such and such including 54 tons of hay?*

A. No.

(Italics ours)

The bankrupt was handed Ex. 1 (R. 33-64) set out in full at p. 9 hereof and was asked if he voluntarily signed the same.

At first he stated that Earhart came to his house and demanded that he sign the paper marked Ex. 1 and refused to leave until it was signed, and positively stated "*that was the reason that it was signed.*" (R. 33)

And after testifying that he had later gone to his attorney with Mr. Earhart to discuss the matter, in answer to a question by the attorney for the trustee, said, in referring to Exhibit No. 1:

*"That wasn't signed that night — I don't remember now — just when it was — that was the next day. I believe the next day or two \* \* \*"*  
(R. 36)

With reference to Ex. 2 — the signed statement made to Mr. Hanson of the Farmers Home Loan Administration, set out at p. 9 hereof, the bankrupt testified that Earhart was not present when it was signed and had nothing to do with it. (R. 34)

W. J. Earhart was called as a witness and testified, giving the background set out in our preliminary statement (R. 38), and after relating that the lease had not been a satisfactory one was asked:

Q. Was the rent fully paid?

A. No, sir.

Q. The first year's operation was not satisfactory?

A. No, sir.

Q. When did you have your first conversation with Mr. Pugh about the 1953-54 hay — the hay he needed to throw into the cattle?

A. I think it was prior to July 10, 1953. (R. 39)

In explaining the arrangement made in connection with the purchase by Earhart of the hay subsequently stored in the hay barn on the leased premises occupied by the bankrupt and which we claim was in legal effect a bailment, Earhart testified that Pugh had refinanced through the Farmers Home Loan Administration and paid up some of his debts. That he had paid Earhart what he owed on the cattle; that the bank had refused to take any more of Pugh's

checks for the rent because of NSF checks, so Pugh wanted him to finance him for the hay for 1953, which Earhart said he would do, but on *an entirely different basis*. Earhart said to him "I will buy the hay and pay for it and sell it to you on a thirty-day basis, as you use it." (R. 39-40)

After further detailing what occurred thereafter with respect to his attempted arrangements with the bank in an effort to protect his investment in this baled hay, as evidenced by exhibits 3 and 4 (R. 65) he was asked:

Q. Did you immediately upon receipt of that letter from the bank (Ex. 4) send a check for \$1200.00 to Harry C. Walters for 60 tons of alfalfa, dated 8/26/53 with the notation on it "60 T. alfalfa first cutting, at Sunnyside"?

A. Yes, sir.

Exhibit 5 (R. 65) being the cancelled check referred to was admitted in evidence (R. 43) which was dated August 26, 1953 and paid by the bank on September 1, 1953, he was then asked:

Q. *Did you have any specific agreement with Mr. Pugh as to how he was to pay for this hay on a monthly basis?*

A. Not yet, no.

Q. That was held in abeyance until he began to feed it?

A. Yes, he didn't feed until October, and this came up in the meantime. (R. 44)

Q. And you had an understanding with him *you would reach an agreement later on that point*, whether he would take his milk checks and turn them over to you?

A. Yes, sir. I always thought we would figure up so many bales a month, you know. That is the way we would do it. (R. 44)

Further testimony of Earhart in connection with his dealings with Strothers concerning the hauling of the hay from Sunnyside to the barn at Kent is fully set out at pages 44 to 47 of the record.

Earhart further testified that he fenced the hay and put up a sign that the hay belonged to him (R. 47) which was subsequently torn down.

Alex Tibeau, who is presently the lessee of the farm and the owner of the cattle testified to a conversation with the bankrupt in the middle of September 1953 in which the bankrupt advised him that Earhart owned the hay in dispute. (R. 54)

The evidence shows that the barn in which the 54 tons of baled hay was stored was not the milking barn. The bankrupt was further interrogated (R. 58)

Q. And the hay was to be stored in the barn for his convenience to get it in to the cows?

A. I don't know where else it would be stored.

## POINTS ON APPEAL

The court erred in affirming on review the order entered by the Honorable Van C. Griffin, Referee in bankruptcy on January 4, 1954, as follows:

- (a) Ordering 54 tons of alfalfa hay to be administered as an asset of the bankrupt estate.
- (b) Ordering the trustee to take possession of said hay.
- (c) Ordering that said hay be sold by the trustee, free and clear of all liens and encumbrances.
- (d) Ordering that petitioners have no right, title or interest in said hay, and
- (e) In making and entering the order of January 4, 1954. (R. 70-73)

## SUMMARY OF ARGUMENT

1. The referee was without jurisdiction to adjudicate the title to the hay.

2. The District Court made no independent findings on review, and the findings of the referee are not supported by the evidence, but are contrary to a preponderance of the documentary evidence.

3. The transaction between the appellant Earhart and Pugh, the bankrupt, was in legal effect a bailment, and all of the evidence clearly shows it to be such.



4. The trustee acquired no greater rights in this 54 tons of baled hay than that of the bankrupt.

### ARGUMENT

Rule 52, Federal Rules of Civil Procedure reads:

“(a) In all actions tried upon the facts without a jury \* \* \* the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; \* \* \* Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court or judge of the credibility of witnesses. The findings of a master, to the extent the court adopts them, shall be considered as the findings of the court. \* \* \*”

As to force and effect of referee's findings see 2 Collier on Bankruptcy (14th Ed. by Moore & Ogleby) 960, 969 § 25.31.

### THE ORDER OF THE REFEREE WAS WITHOUT JURISDICTION

As stated by the late Judge Neterer, sitting on the Court of Appeals of this Circuit in the case of *In re Faerstein et al*, 58 Fed. (2d) 942 (943):

“Referees are invested with certain powers ‘subject always to a review by the judge.’ See 66, Title 11 U.S.C.A. The referee has no independent judicial authority. He is not a district

court, and has no power not conferred by order of reference, by law or general orders. "The district courts of the United States in the several States \* \* \* are made courts of bankruptcy, 11 U.S.C.A., Sec. 11. A court is said by Blackstone to be vested with judicial power to adjudicate issues between contending factors, and is composed of the actor, or plaintiff; the reus, or defendant; and the judex, the judicial power which examines the truth of the contending parties and applies the remedy. A referee is an instrumentality of the court, with limited powers. His jurisdiction is defined by Section 66, Title 11, U.S.C.A. and his duties are given in Section 67."

The District Court, in affirming the order of the referee, made no specific findings of fact and we may assume, although the court does not so state, that the findings of the referee were adopted in toto, because of this language contained in that order:

"\* \* \* and it appearing to the Court that the findings of fact are supported by the full record and transcript of proceedings and testimony and that the conclusions of law are not shown to be in any way erroneous now therefore, etc. \* \* \*." (R. 66)

Whether such language may be considered as findings of facts under the rule is extremely doubtful.

The District Court, we believe, either entirely overlooked, or did not consider the documentary evidence — herein set out, which was introduced and admitted in evidence and made a part of the referees certificate, and a part of this record of the printed

transcript of the evidence of December 1, 1953, else the Court would have, we believe, considered the case of *Weinstein Bros & Survol vs. Laugharn* from this Court reported in 84 Fed (2d) 419, where the District Court reversed the order of the referee on a somewhat similar question, wherein the District Court's order and decision was affirmed.

We assert, however, that the District Court erred grievously in, "*in all respects*" ratifying, approving and confirming the order of the referee, particularly as to: (a) ordering 54 tons of alfalfa hay to be administered as an asset of the bankrupt estate.

It naturally follows that if this is not justified under the evidence and the law, then the other things ordered by the referee must likewise be held to be erroneous.

It will be remembered that *the bankrupt did not list this or any alfalfa hay as an asset* in the schedule filed by him.

There is no evidence that these schedules have ever been amended or that the trustee took an inventory of the bankrupt estate.

The appellants contention is that the evidence taken as a whole clearly shows a bailment and we have no less authority than the United States Su-

preme Court for the rule that property held by a bankrupt as bailee, does not of course pass to the trustee.

*Ludvigh v. American Woolen Co.*, 231 U.S. 522.

In 6 Am. Jur. Bankruptcy, Sec. 177 p. 614, the author states:

“Whether certain goods in possession of the Bankrupt were held by him as purchaser thereof and therefore passed to his trustee in bankruptcy, or whether the bankrupt was in possession of them as bailee so that the trustee acquired no title thereto, will depend upon the application to the facts of the case of general principles of law apart from any provision of the bankruptcy act.”

*Parlett v. Blake*, 188 F. 200.

We have set out herein, in considerable detail all of the evidence pertinent to this issue, and insist that this evidence clearly shows a bailment.

In 8 C.J.S., Sec. 169 p. 620, the author says:

“By reason of an express provision of the Bankruptcy Act Sec. 70 (5) (11 U.S.C.A. Sec. 10 a5) the property which passes to the trustee, other than that which is exempt, *is that which the bankrupt could, prior to the filing of the petition, by any means have transferred, or which might have been levied on and sold under judicial process against him, this being the principal test whether or not property is such as will vest in the trustee.*”

and at page 621

“The trustee takes, of course, no title to property which did not belong to the bankrupt, *although he may have been in possession thereof.*” *In re Allee*, 55 F. (2d) 76.

In the case of *In re Allee*, *supra*, at p. 77 the court said:

“The source of trustee’s title, if any, is based upon 11 U.S.C. Sec. 75 (a) (2) 11 U.S.C.A. Sec. 75(a) (2) which in part reads as follows:

“\* \* \* such trustees, as to all property in the custody \* \* \* of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied \* \* \*”

That was a case involving a chattel mortgage duly recorded. The district court was reversed.

We have no quarrel with referee’s finding I (R. 14). As to findings numbered 2 and 3, to the effect that the bankrupt purchased this hay and paid \$1200.00 for it is not only misleading but entirely false.

The uncontroverted evidence is that he attempted to do so with a check that was returned by his bank on account of “*insufficient funds.*”

As to this transaction, the testimony of Earhart is uncontroverted as to the arrangement made which in substance was that he would and the evidence shows he did, actually purchase the hay, store it in the leased property and orally agreed with the bankrupt that he would sell it to him at a future date.

Finding No. 9 seems to express the theory upon which the referee appears to have based his decision — *possession by the bankrupt*.

The conclusion of law numbered 1 is erroneous and appears to be a conclusion drawn from findings 2 and 3 which are not supported by the evidence.

### CONCLUSION

To deprive one of his property merely because it is in the possession of a bankrupt under evidence such as here adduced is not only inequitable but is positively nonsensical.

It is respectfully submitted that the judgment should in all things be reversed.

Respectfully submitted,

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HAROLD J. SHEA

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